IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SECOND DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE Ch.S.R.K. PRASAD

WRIT PETITION No: 18266 of 2004

Between:

Smt. Rekha Bai, W/o.Raju Singh, @ Pappu Singh @ Pappu,
R/o.12-1-350/1/A1, Asifnagar Baitak,
Mangalhat, Hyderabad.

..... PETITIONER

AND

1 The Collector, & District Magistrate, Hyderabad Dist. Hyderabad.
2 The Superintendent of Prison, Central Prison, Chanchalguda, Hyderabad.
3 The Government of A.P. General Administration (Law & order. II) Dept., rep. by its Chief Secretary to Govt. Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue appropriate writ, order or direction more particularly one in the nature of a writ of Habeas Corpus directing the respondents to produce Sri Raju Singh @ Pappu Singh @ pappu now detained in the central prison, Chanchalguda and set him at liberty forthwith after declaring his detention as illegal, arbitrary in the interest of justice.

Counsel for the Petitioner: MR.MILIND G GOKHALE

Counsel for the Respondents: THE ADVOCATE GENERAL

The Court made the following:

ORAL ORDER: (By GB.J.)

The detention order passed by the Collector and District Magistrate, Hyderabad District, who is the first respondent herein, in Cr.No.C/6042/2003 dated 16-8-2004 is assailed in this Writ Petition.

2. The first respondent passed the detention order under the provisions of Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (for short 'the Act') declaring the detenu as bootlegger within the meaning of Section 2(b) of the Act. The grounds mentioned in support of the detention order are as follows:

> "1. On 09-06-2000 at about 08-40 P.M., on reliable information about the illegal sale of I.D. Liquor at H.No.7-1-631, Bapu Nagar, S.R.Nagar, Hyderabad, Mr.G.Venkateswarlu, Prohibition & Excise Inspector, State Task Force, along with staff raided the aid house in the presence of mediators and found one person in the said house. On searching, the officers found 9 polythene bags containing total 900 I.D. Liquor Sachets in the said house. On interrogation he revealed his name as M.Mahender S/o Yadaiah and that he is selling the said sachets along with his brother Chinna being purchased the same from you and that you supplied the said sachets to him. The Investigating Officer seized the contraband and drawn the samples, and a case was registered against You, said M.Mahender & M.Chinna in C.O.R.No.62/00-01 of SHO, Ameerpet, U/Sec. 7A R/w 8(e) of A.P. Prohibition Act, 1995. The said M.Mahender was arrested released on bail. Subsequently said M.Chinna was surrendered before Hon'ble V M.M. and released on bail. Further you are arrested on 19-11-2003 and later released.
>
> The sample of I.D.Liquor drawn from the contraband seized was sent for Chemical Analysis and the Government Chemical Examiner reported in his C.E. Report stated that the sample is Illicitly Distilled Liquor, un-fit for potable purpose. The charge-Sheet is filed in V MM Court at Nampally, Hyderabad by SHO, Ameerpet and C.C. number awaited.
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> 2. On 28-11-2001 at about 07-15 A.M., on reliable information about the illegal

transport of I.D. Liquor on the road at S.R.Nagar X Road on road leading to Erragadda, Hyderabad, Mr.P.Yadagiri, Prohibition & Excise Sub Inspector, State Task Force, Hyderabad along with staff conducted route watch and stopped one scooter without number ridden by one person. On searching the scooter, officers found 2 rubber tubes containing 120 liters of I.D. Liquor. On interrogation he revealed his name as M.Kumar, S/o M.Yadaiah and that he is transporting the said liquor being purchased the same from You and that You supplied the said liquor to him. The Investigating Officer seized the contraband and drawn the samples, and a case was registered against You and said M.Kumar in C.O.R.No.364/01-02 of SHO, Ameerpet, U/Sec.7A R/w 8(e) of A.P.Prohibition Act, 1995. The said Kumar was arrested released on bail. Subsequently, You are arrested on 19-11-2003 and later released on bail.

The sample of I.D. Liquor drawn from the contraband seized was sent for Chemical Analysis and the Government Chemical Examiner reported in his C.E. Report stated that the sample is Illicitly Distilled Liquor, un-fit for potable purpose. The Charge-Sheet is filed in V MM Court at Nampally, Hyderabad by SHO, Ameerpet and C.C. number awaited.

3. On 12-3-2002 at about 05-30 P.M., on reliable information about the illegal transport of I.D. Liquor on the main road opposite to Umesh Chandra Statue, S.R.Nagar, Hyderabad Mr.B.Lakshma Reddy, Prohibition & Excise Sub Inspector, State Task Force, Hyderabad along with staff conducted route watch in the presence of mediators and stopped on Bajaj Scooter driven by Md.Azam S/o Abdul Rahim along with another person. The pillion rider ran away. On searching, the officers found 2 black rubber tubes containing total 160 liters of I.D. Liquor in the possession of said Azam. On interrogation he revealed that the person who ran away was M.Chinna s/o Yadaiah and that he is transporting the said I.D.Liquor supplied by You to sell the same on Your behalf to M.Chinna S/o Yadaiah. The Investigating Officer seized the contraband and drawn the samples, and a case was registered against You, said Azam & Chinna in C.O.R. No.549l/01-02 of SHO, Ameerpet, U/Sec.7A R/w 8(e) of A.P. Prohibition Act, 1995. The said Azam was arrested released on bail. Subsequently said M.Chinna was surrendered before Hon'ble V M.M. and released on bail. Further You are arrested on 19-11-2003 and later released on bail.

The sample of I.D. Liquor drawn from the contraband seized was sent for Chemical Analysis and the Government Chemical Examiner reported in his C.E. Report stated that the sample is Illicitly Distilled Liquor, un-fit for potable purpose. The Charge-Sheet is filed in V MM Court at Nampally, Hyderabad, by SHO, Ameerpet and C.C. number awaited.

4. On 24-10-2002 at about 11-00 P.M., on reliable information about the illegal sale of I.D. Liquor at H.No.7-1-631, Bapu Nagar, S.R.Nagar, Hyderabad,

Mr.K.Umesh, Prohibition & Excise Sub Inspector, State Task Force, along with staff raided the said house in the presence of mediators and found one person in the house. On searching, the officers found four black rubber tubes containing total 320 liters I.D.Liquor & 20 Polythene bags containing total 2000 I.D. Liquor Sachets in the said house. On interrogation he revealed his name as M.Kumar @ Chinna S/o Yadaiah and that he is selling the said liquor & sachets being purchased the same from You and that You supplied the said liquor & sachets to him. The Investigating Officer seized the contraband and drawn the samples, and a case was registered against You and the said M.Kumar in C.O.R.No.371/02-03 of SHO, Ameerpet, U/Sec.7A R/w 8(e) of A.P. Prohibition Act, 1995. The said M.Kumar was arrested released on bail. Subsequently You are arrested on 19-11-2003 and later released on bail.

The sample of I.D.Liquor drawn from the contraband seized was sent for Chemical Analysis and the Government Chemical Examiner reported in his C.E. Report stated that the sample is illicitly Distilled Liquor, un-fit for potable purpose. The Charge-Sheet is filed in V MM Court at Nampally, Hyderabad by SHO, Ameerpet and C.C. number awaited.

5. On 22-7-2003 at about 04-00 A.M., on reliable information about the illegal transport of I.D.Liquor on the road opposite Amrutha Diabetic Centre, Banjara Hills, Hyderabad, Mr.Md.javid Ali, Prohibition & Excise Sub Inspector, SDTF, Secunderabad along with staff conducted route watch and stopped one scooter bearing No.AEA 437 ridden by two persons of whom one person ran away. On searching the scooter, the officers found two plastic bags containing 700 I.D.Liquor Sachets. On interrogation he revealed his name as N.Vinod, S/o Narsing Rao and that he is transporting the said liquor along with Hajmukh on Your behalf being received the same from You for the purpose of handing over it to M.Chinna, S/o Yadaiah. The Investigating Officer seized the contraband and drawn the samples, and a case was registered against You and said M.Kumar in C.O.R.No.227/03-04 of SHO, Ameerpet, U/Sec.7A R/w 8 (e) of A.P.Prohibition Act, 1995. The said Vinod was arrested released on bail. The said Hajmukh is absconding whereas the said M.Chinna surrendered before Hon'ble V M.M. and was released on bail. Subsequently You are arrested on 19-11-2003 and later released on bail.

The sample of I.D.Liquor drawn from the contraband seized was sent for Chemical Analysis and the Government Chemical Examiner reported in his C.E. Report stated that the sample is illicitly Distilled Liquor, un-fit for potable purpose. The Charge-Sheet is filed in V MM Court at Nampally, Hyderabad by SHO, Ameerpet and C.C. number awaited.

6. On 23-7-2003 at about 2-00 p.m. on reliable information about the illegal sale of I.D. liquor at H.No.7-1-631, Bapu Nagar, S.R. Nagar, Hyderabad, Mr.

Md. Javid Ali, Prohibition & Excise Sub Inspector, SDTF, Secunderabad along with staff raided the said house in the presence of mediators and found none in the said house. On searching, the officers found 26 plastic bags containing total 2600 I.D. liquor sachets in the said house. On enquiry the local people revealed that the said house and contraband belong to M. Chinna Yadav, S/o. Yadaiah who is selling I.D. Liquor sachets supplied by you. The investigating officer seized the contraband and drawn the samples, and a case was registered against you & M. Chinna Yadav in C.O.R. No.232/03-04 of SHO, Ameerpet, U/Sec 7A R/w 8(e) of A.P. Prohibition Act, 1995. The said M. Chinna Yadav surrendered before Hon'ble V M.M. and released on bail. Further you are arrested on 19-11-2003 and later released on bail.

The sample of I.D. liquor drawn from the contraband seized was sent for Chemical Analysis and the Government Chemical Examiner reported in his C.E. Report stated that the sample is illicitly distilled liquor, unfit for potable purpose. The Charge-Sheet is filed in V MM Court at Nampally, Hyderabad by SHO, Ameerpet and C.C. number awaited.

7. On 6-8-2003 at about 3-30 p.m. on reliable information about the illegal sale of I.D. liquor at H.No.8-4-371/168/1, Bora Banda, Erragadda, Hyderabad, Mr. K. Srinivasa Reddy, Prohibition & Excise Sub-Inspector, Sub Divisional Task Force, Secunderabad along with staff raided the said house in the presence of mediators and found two persons in the house of whom one person ran away. On searching, the officers found two black rubber tubes containing total 80 liters I.D. liquors & 2500 I.D. liquor sachets in the said house. On interrogation she revealed her name as B. Anjamma, W/o. Venkatesham and that the name of the person who ran away from the place is Mallesh, S/o. Babu, and further that they are selling the said liquor & sachets being purchased the same from you and that you supplied the said liquor & sachets to them. The Investigating Officer seized the contraband and drawn the samples, and a case was registered against you, said Anjamma & Mallesh in C.O.R.No.262/03-04 of SHO, Ameerpet, U/Sec.7A R/w.8(e) of A.P. Prohibition Act, 1995. The said Anjamma was arrested released on bail. The said Mallesh was subsequently arrested on 27-8-2003 and later released on bail. Subsequently, you are arrested on 19-11-2003 and later released on bail.

The sample of I.D. liquor drawn from the contraband seized was sent for Chemical Analysis and the Government Chemical Examiner reported in his C.E. Report stated that the sample is illicitly Distilled Liquor, unfit for potable purpose. The Charge-Sheet is filed in V MM Court at Nampally, Hyderabad by SHO, Ameerpet and C.C. number awaited.

8. On 8-8-2004 at about 5-30 p.m., on reliable information about the illegal

sale of I.D. liquor in front of the H.No.12-1-50/1/A, Dattatreya Nagar, Asif Nagar, Upper Dhoolpet, Hyderabad, Mr.M.Phanender Reddy, Prohibition & Excise Sub Inspector, along with K.A. Hafeez, Prohibition & Excise Inspector, Dhoolpet, Hyderabad along with staff raided the said place and found you selling I.D. liquor sachets and you ran way into the bye-lanes leaving three polythene bags. On searching, the officers found total 406 I.D. liquor sachets in the said place. On enquiry the local people revealed that the said house and contraband belong to you. The Investigating Officer seized the contraband and drawn the samples, and a case was registered against you in C.O.R.No.335/04-05 of SHO, Dhoolpet, U/Sec.7A R/w 8(e) of A.P. Prohibition Act, 1995. Having committed the offence you is absconding.

The sample of I.D. liquor drawn from the contraband seized was sent for Chemical Analysis and the Government Chemical Examiner report is awaited. As such the case is pending investigation."

3. Assailing the abovesaid detention order, the learned counsel for the detenu raised many contentions, viz., that when on earlier occasion order of detention was passed on 13-2-2004, it was quashed by this Court by an order dated 16-3-2004 in W.P.No.3736 of 2004. Thereafter, the present order dated 16.8.2004 is passed. He further submits that there were no fresh incidents from the date of quashing of the earlier order and therefore, the order is liable to be set aside. He also submits that the percentage of the fusel oil has not been mentioned by the Chemical Analyst and therefore, on that ground also the detention order is liable to be set aside. Lastly he contends that ground No.8 is wholly an irrelevant ground inasmuch as the report of the Chemical Analyst is still awaited and even before the receipt of such a report, it is not appropriate for the authority to come to the conclusion that the detenu has committed the offence punishable under Section 7(a) read with Section 8(e) of A.P. Prohibition Act.

4. On the other hand the learned Advocate General tried to convince this Court that the contentions raised by the learned counsel for the detenu are not sustainable in law.

5. After hearing both the learned counsel, we find that ground No.8 is an irrelevant ground inasmuch as the report of the Government Chemical Examiner was not received and even prior to the receipt of the report, the detention order was issued and therefore the said ground is wholly irrelevant. It has been held by the catena of

decisions of this Court that failure to consider relevant grounds and considering irrelevant grounds would vitiate the entire detention order and it cannot be bisected and salvaged to the extent of relevant grounds only. Therefore, even without waiting for the report of the Chemical Examiner, the order of detention was passed basing on ground No.8. Thus, we find that it is wholly an irrelevant ground. However, we make it clear that we are not deciding the other contentions raised by the learned counsel for the detenu.

6. Under those circumstances, the order of detention is not sustainable and accordingly it is set aside.

7. In the result, the Writ Petition is allowed and the impugned order of detention passed by the 1st respondent is hereby quashed. The detenu shall be set at liberty forthwith, if not required in any other crime.

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02-11-2004

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ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Collector, & District Magistrate, Hyderabad Dist. Hyderabad.
2 The Superintendent of Prison, Central Prison, Chanchalguda, Hyderabad.
3 The Government of A.P. General Administration (Law & order. II) Dept., rep. by its Chief Secretary to Govt. Secretariat, Hyderabad.

4. 2 C.Cs to Advocate General, High Court Buildings, Hyderabad (OUT).

5. 2 C.D. copies.